

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTONIO R. AZPEITIA,

Defendant.

CASE NO. 8:04CR499

**MEMORANDUM
AND ORDER**

This matter is before the Court on Filing No. 46, submitted by the Defendant, Antonio R. Azpeitia, which appears in the above-captioned docket as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255(f)(3) (“§ 2255 motion”).¹ In the § 2255 motion, Azpeitia indicates that the Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) is applicable to this case.

Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts requires initial review of a defendant’s § 2255 motion. Rule 4(b) states:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Upon review the docket sheet, the most recent time Azpeitia appeared before this Court was on a Petition for Offender Under Supervision (Filing No. 31). At the hearing regarding the revocation of his supervised release held on April 20, 2009, Azpeitia admitted

¹The Court notes that Azpeitia’s § 2255 motion has also been filed in his two other cases filed in District Court for the District of Nebraska which are assigned to Senior Judge Lyle E. Strom: Case No. 8:09CR4 and Case No. 8:09CR192.

to the allegations in the petition and he was sentenced to 24 months of imprisonment with no supervised release to follow (Filing No. 42). The Court has determined that Azpeitia has served all of his sentence in Case No. 8:04CR499. Therefore, the 2255 motion pending in this case will be denied as moot.

THEREFORE, IT IS ORDERED:

1. That the Court has completed initial review of the Defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 46);
2. The Court dismisses the Defendant's § 2255 Motion as moot;
3. A separate Judgment will be issued denying the § 2255 Motion; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 21st day of July, 2016.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge